



United States  
Department of  
Agriculture

Food and  
Consumer  
Service

Mountain  
Plains  
Region

1244 Speer Boulevard  
Denver, CO  
80204-2581

Reply to  
Attn of:

MAY 31 2002

SP 02-23

Subject:

Questions and Answers on Policy Issues from 11<sup>th</sup> Biennial USDA Mountain Plains  
Consultants' Conference

To: STATE AGENCY DIRECTORS – Colorado ED, Iowa, Kansas, Missouri ED,  
(Special Nutrition Programs) Montana OPI, Nebraska, North Dakota,  
South Dakota, Utah and Wyoming

This memorandum contains questions and answers for issues discussed at the above-referenced meeting.

**School Meals Initiative (SMI):**

**S-1 Q:** Are there minimum or maximum thresholds of tolerance set for one or more of the USDA nutrient standards at the State Agency (SA) level?

**S-1 A:** Technically, there are no tolerance levels. Initially, in the early stages of SMI, an informal decision was made to allow SAs the discretion to determine what was a reasonable tolerance since states work closely with schools and would have knowledge of the type of improvement/corrective action plans with the School Food Authority (SFA). Basically, SMI is a technical assistance review that is intended to achieve continuous improvement in meeting the nutrition standards as outlined in the regulations. The pilots did have a tolerance level, but that was not included in the final rulemaking when the SMI regulations were published.

What we look at when we come out to the state office, as part of the management evaluation process, is to see if the actions/recommendations made by the SA are reasonable. For example, if you had a school that went from 38 percent total fat from calories to 31 percent, the SA may have opted not to make a formal recommendation for improvement but rather to commend the improvement made by the school. This would be reasonable. The key is to thoroughly document the rationale to justify the actions taken or not taken.

Also, see pages 2-3 of *Reviewer's Guide to SMI Nutrition Reviews and Technical Assistance*, Nutrition Assessment Reviews Versus CRE, where it states: "The goals of the nutrition assessment reviews, however, are more technical assistance oriented and the procedures and forms are guidance, not required directives."

Additionally, see page 4, "What An Effective Nutrition Review *Does Not* Include."

**S-2 Q:** Is a combined analysis of breakfast and lunch encouraged, discouraged, or required?

**S-2 A:** Combined analysis is neither encouraged, discouraged, or required. Our National Office has determined that the difference in age/grade groups for breakfast and lunch under the food based menu planning option is not significant enough to prohibit combined analysis because the combined analysis weights the nutrient contribution proportionately based on participation for breakfast versus lunch. So even if there is a slight variation, our National Office is comfortable with the process of combined analysis.

Also, see pages 45-46 of *Nutrient Analysis Protocols for the School Nutrition Program*, dated February 1998.

**S-3 Q:** Should a SA take financial action against schools that do not work to make improvements towards USDA's nutritional standards?

**S-3 A:** 210.19(a)(1)(vii) states: "If a SFA fails to meet the terms of the corrective action plan, the SA shall determine if the SFA is working in good faith towards compliance and, if so, may renegotiate the corrective action plan, if warranted. However, if the SFA has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the SA shall determine if a disallowance of reimbursement funds ...is warranted." Also, see page 20 of *Reviewer's Guide to SMI Nutrition Reviews and Technical Assistance*, bullets entitled, "Non-compliance with the Improvement Plan" and "Fiscal Action." And, page 134, number 7, "Fiscal Sanctions" and page 135, "Fiscal Sanctions."

**S-4 Q:** Is the inclusion of "self-serve" food bars (adjusted to reflect actual student consumption) negatively affecting compliance to the SMI-mandated nutrient goals?

**S-4 A:** Food bars should not negatively affect compliance. SP 98-06, dated December 8, 1997, offers further guidance, particularly the section called "Food Bars as Recipes."

Also, see pages 70-71 of *Nutrient Analysis Protocols for the School Nutrition Program*, dated February 1998.

#### **Coordinated Review Effort (CRE) – CN Labels:**

**C-1 Q:** Should we accept product fact sheets, as is, from a company or should we question the data and require a signed and dated fact sheet?

**C-1 A:** For CRE purposes, a CN label is the best way to determine if a particular component is satisfied. When a CN label is not available, the SFA should have a nutrient analysis data form from the manufacturer that shows what components are met by the product and what quantities must be served to meet those components. The regulations do not require that the SA validate this information. However, if the SA sees information that appears to be incorrect, we would recommend follow up with the manufacturer or require that the SFA do so. The SFA may request a product fact sheet signed and dated by an officer of the company.

**Food Service Management Companies (FSMCs):**

**F-1 Q:** If there are cost-reimbursable contracts in effect, must the SFA rebid the contract so it contains all the required language FNS is expected to issue later this year?

**F-1 A:** .Yes, because the recently-released OIG national audit has said that FSMCs have not been giving proper credit for discounts and rebates received, and therefore, all contracts that did not originally contain specific language requiring proper crediting must be rebid. This is because all contracts must comply with the terms listed in the RFP, and only amendments to the contract that represent minor deviations from the RFP and original contract may be approved by the SA. The national audit noted that amending a contract to give proper credit for discounts and rebates received would be a substantive change to the exiting contract, not a minor deviation because the value exceeds the State's small purchase threshold.

FNS will be providing additional guidance outlining all new FSMC contracting requirements. For example, we anticipate that all cost-reimbursable contracts will be required to contain a statement such as: "All costs charged must be net of all discounts, rebates, and allowances received by a FSMC and listed on the monthly invoice or statement as a credit or reduction to the amount billed."

No current cost-reimbursable contracts that fail to meet the anticipated new contract requirements will have to be rebid for School Year (SY) 2002-2003. Currently, we anticipate that all contracts that must meet the expected new requirements must be bid for SY 2003-2004.

If you have questions about any of the above-referenced questions and answers, please feel free to contact our office at 303-844-0355.

*Darlene Sanchez*

DARLENE SANCHEZ  
Program Director  
Special Nutrition Programs